

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JERMAINE JOHNSON,

Movant,

v.

CIVIL ACTION No. 3:05-0487
(CRIMINAL ACTION NO. 3:03-00213)

UNITED STATES OF AMERICA,

Respondent.

ORDER

This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the District Court reopen this matter for further sentencing for the purpose of determining whether or not the enhancement of Movant's sentence for his possession of a firearm was appropriate and for re-sentencing as may be appropriate under Booker. Neither party has filed objections to the Magistrate Judge's findings and recommendation. Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge, consistent with the findings and recommendation. The Clerk is **DIRECTED** to re-open United States v. Johnson, Criminal No. 3:03-00213.

The Court **SCHEDULES** a re-sentencing hearing for **September 27, 2010, at 2:00 p.m.** The Government is directed to file a memorandum on or before **September 7, 2010**, to disclose any

evidence and argument for application of the gun enhancement and its position on the applicability of Booker. Defendant is directed to respond on or before **September 14, 2010**.

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: July 20, 2010

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE